

# Court of Appeals, State of Michigan

## ORDER

Thomas M O'Leary v Bank One Corporation

Docket No. 258173

LC No. 03-050932-CH

Henry William Saad

Presiding Judge

Mark J. Cavanagh

Pat M. Donofrio

Judges

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The Court orders pursuant to MCR 7.205(D)(2) that the September 8, 2004, order of the Oakland County Circuit Court denying defendant's motion to set aside the default judgment hereby is REVERSED IN PART only with regard to the amount of damages. With his motion for entry of the default judgment, plaintiff requested \$66,267.79 for the future interest that may be accrued should he fail to satisfy a divorce judgment. Damages based on speculation or conjecture are not recoverable. *Ensink v Mecosta Co General Hosp*, 262 Mich App 518, 525; 687 NW2d 143 (2004). Accordingly, the circuit court clearly erred in awarding that amount to plaintiff and should have granted defendant's motion as to those damages in the default judgment. The case is REMANDED and the circuit court is directed to enter an order striking \$66,267.79 from the February 11, 2004, default judgment. In all other respects, the application for leave to appeal is DENIED for lack of merit in the grounds presented.

The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 22 2005

Date

*Sandra Schultz Mengel*  
Chief Clerk